

### **REMARKS**

In the Office Action dated May 31, 2007, 35 USC ¶103 is quoted as the basis for all obviousness rejection set forth. In paragraphs 2a, 2c, and 2e, the phrase "it is obvious to a person of ordinary skill in the art" is employed in support of various rejections. However, paragraph 2 states that claim 41 "are rejected under 35 USC ¶(102e) as being anticipated by Berry. In view of the phrase "it is obvious to a person of ordinary skill in the art" being employed in a discussion of claim 41, Applicant assumes that the rejection of claim 41 is an obviousness-type rejection and replies on that basis.

#### ***Claim Rejections –35 USC §103***

Claim 41 is rejected under 35 USC ¶103(a) as being unpatentable over Berry et al (US 6,014,451). The Examiner cites Berry for disclosing a system for a diagnostic technician to diagnose plant diseases at a remote site by remote video imaging. Furthermore, the diagnostic technician has access to a database of images and/or descriptions of plant pathogens, lesions and other anomalies to assist in making a diagnosis. (Field of the Invention and Abstract) The Examiner recognizes that Berry does not teach that the samples are collected in their original, natural environment because the tissue under microscope is cultured in a Petri dish to grow the pathological fungi to fungal spores.

Accordingly, Applicant has amended claim 41 to specify that photomicrographs of the samples are obtained in their original, natural environment without the use of a culturing agent. It should be noted that one objective of the present invention is to enable semi-skilled persons to capture the photomicrographs of samples in their original, natural environment and to transmit the photomicrographs to a laboratory where a skilled mycologist or other certified person can make the required identification. Given the teachings of Berry would render the present invention less desirable.

It is also well established that, in order to reply on a reference as a basis for rejection of an applicant's invention, the reference must be either in the field of

applicant's endeavor, or, if not, then be reasonably pertinent to the particular problem with which the invention was conceived. *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443 1445 (Fed. Cir. 1992) In this instance, the field of applicant's endeavor involves the identification of air born fungal spores and molds and in complete contrast, Berry's field of endeavor involves plant anomalies. In order to remove Berry as a reference, Applicants has also amended claim 41 to specify that photomicrographs of the microscopic contaminants are of microscopic contaminants that do not comprise plant anomalies. Given this limitation, there is no basis for Berry to be reasonably pertinent to applicant's field of art. Applicant thus believes there is no remaining valid basis for the present rejection and respectfully requests that the rejection of claim 41 be withdrawn.

Claims 42-50 further limit claim 41 and for the reasons given above, are also believed to contain patentable matter.

### ***Conclusion***

Applicant believes that this application contains patentable subject matter and that the foregoing amendments provide a basis for favorable consideration and allowance of all claims; such allowance is respectfully requested. If any matter needs to be resolved before allowance, the Examiner is encouraged to call Applicant's representative at the number provided below.

Respectfully submitted,



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